

IN THE SUPREME COURT OF NOVA SCOTIA
Citation: Customer First Financing v. Jones, 2004 NSSC 68

Date: 20040329
Docket: 212055A
Registry: Sydney

Between:

206134 Nova Scotia Limited
(c.o.b. under style and name of Customer First Financing)

Appellant

v.

Daniel Jones

Respondent

Judge: Before the Honourable Justice Frank Edwards

Heard: March 16, 2004, in Halifax, Nova Scotia

Counsel: Eugene Y.S. Tan, Esq., for the Appellant
Steven G. Zatzman, Esq., for the Respondent

By the Court:

- [1] This is an Appeal of a decision dated November 14, 2003, by an Adjudicator of the Small Claims Court.
- [2] The Appellant numbered company (doing business as “Customer First Financing”) had brought an action against the Respondent for the balance owing on a promissory note dated June 13, 2002. The note was to secure financing for the Respondent’s purchase of a motor vehicle from Suzuki. Suzuki and Customer First are separate corporate entities. The Respondent, an employee of Suzuki, was to pay off the note from commissions he earned at Suzuki. The note makes no reference to any agreement by Suzuki to apply the Respondent’s earnings to the note. The Respondent quit Suzuki after six or seven months’ employment.
- [3] The Respondent assumed that his Suzuki earnings were sufficient to retire the debt. The Adjudicator accepted that argument and found that Suzuki should have paid off the loan with the Appellant. He found that Suzuki and the Appellant were operating under the “same umbrella” and thus he lifted the “corporate veil” between them.
- [4] With respect, the Adjudicator erred. The Respondent is clearly liable to Customer First under the promissory note irrespective of any separate

arrangement, agreement or contract he may have had with Suzuki. [See *IAC Ltd. v. Hirtle Transport Ltd.* (1977), 27 NSR (2d) 416 (NSSC)] Further, absent evidence of using corporate status for a fraudulent or improper purpose to the Respondent's detriment, the Adjudicator should not have lifted the "corporate veil" between Suzuki and Customer First. [See *Lockharts Ltd. v. Excalibur Holdings Ltd. et al* (1987), 83 NSR (2d) 181 (NSSC)]. This was especially so where Suzuki was not a party to the action.

[5] If the Respondent can prove that Suzuki, contrary to his agreement with them, did not pay Customer First from his earnings, his remedy is to bring an action against Suzuki. I am allowing the appeal with costs of \$50.00. If the parties cannot agree upon the present amount owing, they may make brief written submissions to me and I will determine the figure.

J.